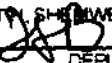


AUG 28 2008

ROBERT W. SHAWWELL, CLERK  
BY   
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

DP CONCRETE PRODUCTS, LLC : DOCKET NO. 2:08 CV 571

VS. : JUDGE MINALDI

AMERICAN SPRING WIRE CORPORATION : MAGISTRATE JUDGE KAY

**MEMORANDUM ORDER**

Before the Court is a Motion to Dismiss, or in the Alternative, Motion to Transfer or Motion to Stay, filed by the defendant, American Spring Wire Corporation (hereinafter "ASW") [doc. 14]. DP Concrete Products, LLC (hereinafter "DP Concrete"), filed an Opposition [doc. 19]. ASW filed a Reply [doc. 23]. DP Concrete filed a Sur-reply [doc. 25].

ASW requests that this Court dismiss, stay, or transfer this action because an action involving ASW's sale of steel cable to DP Concrete was filed in the United States District Court for the Northern District of Ohio approximately one month before this suit.<sup>1</sup> ASW argues that pursuant to the first-to-file rule, the action is appropriately heard in the Northern District of Ohio. See, e.g., *Save Power Ltd. v. Syntek Finance Corp.*, 121 F.3d 947, 950 (5th Cir. 1997) (noting that "[t]he Fifth Circuit adheres to the general rule that the court in which an action is first filed is the appropriate court to determine whether subsequently filed cases involving substantially similar issues should proceed"). "The first-to-file rule is grounded in principles of comity and

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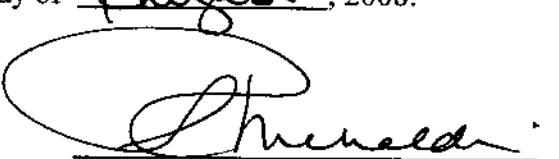
<sup>1</sup> Def.'s Mot. to Dismiss [doc. 14], at 2.

sound judicial administration.” *Id.*

After briefing was complete, DP Concrete moved for leave to file a Sur-Reply [doc. 25]. In its Sur-Reply, DP Concrete argues that ASW’s Motion to Dismiss is now moot, because the Northern District of Ohio dismissed the previously-filed case on July 23, 2008.<sup>2</sup> Indeed, the federal district judge of the Northern District of Ohio dismissed the case for lack of personal jurisdiction over DP Concrete.<sup>3</sup> Because the Ohio federal court has dismissed the first-filed case for lack of personal jurisdiction, this case becomes the first-filed case and ASW’s rationale for dismissal no longer applies; accordingly,

IT IS ORDERED that ASW’s Motion to Dismiss, [doc. 14], is hereby MOOT.

Lake Charles, Louisiana, this 26 day of August, 2008.



PATRICIA MINALDI

UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Pl.’s Sur-reply [doc. 25], at 1.

<sup>3</sup> Pl.’s Ex. A [doc. 25].